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BEFORE THE
FEDERAL ELECTION COMMISSION

2016 NOV 10 AM 8:52

American Democracy Legal Fund
455 Massachusetts Avenue, N.W.
Washington, DC 20001

OFFICE OF GENERAL
COUNSEL

Complainant,

v.

Ron Johnson for Senate, Inc.
219 E. Washington Ave, Suite 101
Oshkosh, WI 54901

MUR # 7198

James J. Malczewski
Treasurer
Ron Johnson for Senate, Inc.
219 E. Washington Ave, Suite 101
Oshkosh, WI 54901

Respondents.

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Senator Johnson, Ron Johnson for Senate, Inc. (the "Committee") and James J. Malczewski, in his official capacity as Treasurer (collectively "Respondents") for violating the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission (the "FEC" or "Commission") regulations, as described below. Respondents appear to have failed to comply with the Commission's disclaimer requirements for a television advertisement that they have approved and sponsored. As a result, the FEC should immediately investigate and levy appropriate sanctions against Respondents for their failure to comply with the Act and Commission regulations.

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FACTS

Senator Ron Johnson is a candidate for reelection to the United States Senate from Wisconsin.¹ His principal campaign committee is Ron Johnson for Senate, Inc.² The treasurer of Ron Johnson for Senate, Inc. is James J. Malczewski.³ Senator Johnson's Committee has paid for and is airing a television advertisement titled "In It For Himself" in support of his reelection to Senate.⁴

The advertisement has the following written disclaimer at the beginning: "Paid for by Ron Johnson for Senate, Inc. Approved by Ron Johnson."⁵ There is no written disclaimer at the end of the ad.⁶

LEGAL DISCUSSION

Under the Act, whenever a political committee makes a disbursement for the purpose of financing any television advertisement or public communication, there are several disclaimers required.⁷ If the communication is paid for and authorized by a candidate, an authorized committee of a candidate, or agent of either, the communication must contain a disclaimer that clearly states that the communication has been paid for by the authorized political committee.⁸ Such a disclaimer must be presented in a clear and conspicuous manner to give the reader or

¹ Ron Harold Johnson, FEC Form 2, Statement of Candidacy, (amended July 22, 2016)
<http://docquery.fec.gov/pdf/627/201607270200324627/201607270200324627.pdf>.

² *Id.*; see also Ron Johnson for Senate, Inc., FEC Form 1, Statement of Organization (amended July 22, 2016),
<http://docquery.fec.gov/pdf/633/201607270200324633/201607270200324633.pdf>.

³ Ron Johnson for Senate, Inc., FEC Form 1, Statement of Organization (amended July 22, 2016),
<http://docquery.fec.gov/pdf/633/201607270200324633/201607270200324633.pdf>.

⁴ The advertisement can be viewed here: <https://www.youtube.com/watch?v=iPuHYvIqyVg&feature=youtu.be>.

⁵ Ron Johnson for Senate, Inc., *In It for Himself* at :01--:04 (Oct. 27, 2016),
<https://www.youtube.com/watch?v=iPuHYvIqyVg&feature=youtu.be>.

⁶ *See id.*

⁷ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); *see id.* § 100.26 (defining public communication).

⁸ 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1).

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observer adequate notice of the identity of the person or political committee that paid for the advertisement.⁹

There are additional disclaimers required for television advertisements. Specifically, a television advertisement that is authorized or paid for by a candidate or the authorized committee of a candidate "must include a statement that identifies the candidate and states that he or she has approved the communication."¹⁰ The candidate must convey this audio statement either (1) through an unobscured, fullscreen view of the candidate making the statement or (2) through a voice-over by the candidate accompanied by a clearly identifiable photograph or similar image of the candidate.¹¹ The communication "must also include a similar statement that must appear in clearly readable writing at the end of" it.¹² The regulations explain that a statement is clearly readable if it (1) appears in letters equal to or greater than four percent of the vertical picture height; (2) is visible for a period of at least four seconds; and (3) appears with a reasonable degree of color contrast between the background and the text of the statement.¹³ A statement satisfies the color contrast requirement "if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the statement is no less than the color contrast between the background and the largest type size used in the communication."¹⁴

The disclaimer regulations are designed to ensure the American people are aware of who is sponsoring political advertisements. Here, Respondents have failed to comply with the basic disclaimer requirements by failing to include a written disclaimer at the end of their

⁹ 11 C.F.R. § 110.11(c)(1), (3).

¹⁰ 11 C.F.R. § 110.11(c)(3)(ii).

¹¹ 11 C.F.R. § 110.11(c)(3)(ii)(A), (B).

¹² 11 C.F.R. § 110.11(c)(3)(iii).

¹³ 11 C.F.R. § 110.11(c)(30)(iii).

¹⁴ 11 C.F.R. § 110.11(c)(30)(iii)(C).

advertisement.¹⁵ The advertisement itself is misleading and negative, and Respondents may have sought to distance Senator Johnson from its message by not taking responsibility for it in the concluding seconds. But the regulations do not give Senator Johnson that option; they require him to take responsibility for his advertisement in a clear, written disclaimer that appears at the end of the ad.¹⁶

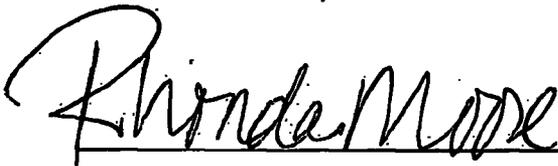
REQUESTED ACTION

As we have shown, Respondents appear to have violated the Act and Commission regulations by failing to comply with basic disclaimer requirements. As such, we respectfully request that the Commission immediately investigate these violations and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



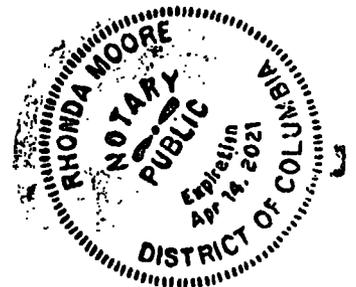
SUBSCRIBED AND SWORN to before me this 2nd day of November ~~October~~, 2016.



Notary Public

My Commission Expires:

4-14-2021



¹⁵ Ron Johnson for Senate, Inc., *In It for Himself* at :01--:04 (Oct. 27, 2016), <https://www.youtube.com/watch?v=iPuHYv1qyVg&feature=youtu.be>; see also 11 C.F.R. § 110.11(c)(3)(iii).

¹⁶ See 11 C.F.R. § 110.11(c)(3)(iii).

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